



Montana Fish, Wildlife & Parks

Region One
490 North Meridian Road
Kalispell, MT 59901
(406) 752-5501
Fax: 406-257-0349
Ref: JS039-08
January 15, 2009

Ladies and Gentlemen:

Fish, Wildlife & Parks (FWP), Region One, has completed an amended environmental assessment (EA) for the proposed Foy's Bend fee title land purchase of approximately 245 acres located just below the transition zone between the upper braided and the lower meandering sections of the Flathead River (R 21W, T28N, Sections 26, 27, 34, & 35) in Flathead County. After reviewing the amended draft EA, and the public comments and public support FWP received on this proposal, I recommend FWP complete the proposed action, subject to final approval by the FWP Commission and the State Land Board.

There were no changes to the amended draft EA based upon public comment received; therefore, the amended draft becomes the final EA. A copy of the amended decision notice is enclosed for your information. Please contact Fisheries Conservation Specialist John Wachsmuth at (406) 751-4554 or e-mail to jwachsmuth@mt.gov with questions or comments.

Sincerely,

James R. Satterfield, Jr., Ph.D.
Regional Supervisor

/ni

Enclosure

c: *Governor's Office, Attn: Mike Volesky, PO Box 200801, Helena, 59620-0801
*Environmental Quality Council, PO Box 20, Helena, 59620-1704
*Dept. of Environmental Quality, Planning, Prevention & Assistance, PO Box 200901, Helena, 59620-0901
*Dept. of Environmental Quality, Permitting Compliance, PO Box 200901, Helena, 59620-0901
*Montana Fish, Wildlife & Parks, Director's Office – Reg Peterson; Legal Unit – Stella Cureton; Fisheries – Karen Zackheim, Nancy Podolinsky, Jim Vashro, Joel Tohtz; Wildlife – Ken McDonald, Jim Williams; Lands – Darlene Edge; Parks – Dave Landstrom; Enforcement – Lee Anderson; Rebecca Cooper
Lynn Ducharme, Confederated Salish & Kootenai Tribes, PO Box 278, Pablo, 59855
*DNRC, PO Box 201601, Helena, 59620-1601 (Patty Greene)
*Montana Historical Society, SHPO, 225 North Roberts, Veteran's Memorial Building, Helena, 59620-1201
*Montana State Library, 1515 East Sixth Ave., Helena, 59620-1800
*Adam McLane, Montana Environmental Information Center, PO Box 1184, Helena, 59624
*George Ochenski, PO Box 689, Helena, 59624
*Wayne Hirst, Montana State Parks Foundation, PO Box 728, Libby, 59923
*Montana State Parks Association, PO Box 699, Billings, 59103
*Joe Gutkoski, President, Montana River Action Network, 304 N 18th Ave., Bozeman, 59715
Rep. Mark Blasdel, PO Box 291, Somers, 59932
Sen Verdell Jackson, 555 Wagner Lane, Kalispell, 59901
Flathead County Commissioners, 800 S Main Street, Kalispell, 59901
Flathead County Libraries, 247 First Avenue E, Kalispell; 521 Electric Avenue, Bigfork
Interested Parties



Montana Fish, Wildlife & Parks

**Region 1
490 N. Meridian Road
Kalispell, MT 59901**

**Amended Decision Notice
and
Finding of No Significant Impact
for
Foy's Bend Land Acquisition
Amended Environmental Assessment**

January 15, 2009

Introduction

In September 2008, Fish, Wildlife & Parks (FWP) Region One issued a draft environmental assessment (EA) and decision notice for the proposed 245-acre Foy's Bend Land Acquisition. After the decision notice was issued, the Region decided to amend the original draft EA to include the fact that FWP would be conveying perpetual conservation easement to the Bonneville Power Administration (BPA) upon purchase of the property. BPA is funding the acquisition to mitigate for fisheries impacts of Hungry Horse Dam. The Region sent out the amended draft EA on December 12, 2008, for a 28-day public comment period closing January 9, 2009.

Background

Under an existing agreement with BPA, FWP and the Confederated Salish and Kootenai Tribes (CSKT) can spend about \$8 million to conserve and protect fisheries habitats in the Flathead River basin through conservation easements or acquisitions. The BPA funds are to be used to replace fisheries habitats impacted by Hungry Horse Dam. These entities have already spent approximately \$3.5 million on habitat projects in the Swan, Flathead, and Jocko Valleys. FWP and the CSKT worked cooperatively to develop the criteria for ranking lands suitable for fisheries habitat conservation. The proposed Foy's Bend land acquisition of approximately 245 acres by FWP was among those projects selected by the joint fisheries team to move forward. This parcel is located just below the transition zone between the upper braided and the lower meandering sections of the Flathead River, consists of the interior of one of the larger meander reaches of the Flathead River, and is nearly 100% surrounded by water. It includes approximately 3.5 km of high quality, intact, cottonwood/riparian riverbank habitat. The Foy's Bend area contains substantial areas of deep, large, woody debris in the river channel, which provides cover and over-winter habitat for adult bull trout. The only building structures on the property include a mobile home and large hay shed. Most of the property falls within the 100-year floodplain.

The proposed project adjoins 190 acres of land already under conservation easement that includes 1.4 km of riverbank, and is across the river from another 265 acres under conservation

easement that includes about 2.4 km of riverbank. This project will protect another 3.4 km of riverbank and will greatly help maintain the habitat integrity of this portion of the Flathead River system where the Stillwater and upper Flathead merge and transition into the meandering lower Flathead River system.

Project Proposal

The proposal is for FWP to acquire 245 acres of land from a private landowner located on Foy's Bend in the Flathead River south of Kalispell, in Flathead County. The acquisition would be subject to the conservation easement conveyed to BPA at closing. FWP would manage this parcel as part of a Fisheries Greenway or Habitat Conservation program. The property is located in Flathead County, Range 21 W, Township 28 N, Sections 26, 27, 34, & 35. It sits at the end of the county road, and there is adequate access for administrative and allowed public use as well as for a possible on-site caretaker.

Conservation Easement Terms

The following are the uses that would be prohibited by the conservation easement unless they were considered "compatible uses" in Part IV of the conservation easement specifically approved in a management plan agreed to by BPA:

1. Haying and/or mowing;
2. Altering of grassland, woodland, wildlife habitat, or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
3. Dumping refuse, wastes, sewage, or other debris;
4. Harvesting wood products;
5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
6. Diverting or causing or permitting the diversion of surface water into, or out of, the easement area surface by any means;
7. Building or placing buildings or structures on the easement area;
8. Planting or harvesting any crop; and
9. Grazing or allowing livestock on the easement area.
10. Mining - excavation, dredging, or removal of soil, sand, gravel, rock, minerals, or other surface or subsurface materials.
11. Incompatible Uses - surface use except for such purposes necessary to preserve, enhance, restore, or create wetlands and riparian resource functions and values;
12. Acts Detrimental to Conservation - activities detrimental to conservation of the the following: fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation;
13. Subdivision - subdivision of land into multiple, independently platted parcels.

However, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing may be allowed if addressed and approved by BPA in the management plan for the property.

Montana Environmental Policy Act

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of a proposed action to the human and physical environment. MEPA directs state agencies to

ensure that the public is informed of and has the opportunity to participate in the decision-making process. FWP prepared a draft and amended environmental assessment (EA) that identified the potential environmental and social impacts of this acquisition.

Description of Proposed Action and Alternatives

FWP developed only one viable alternative for the proposed action, the no-action alternative. The landowner was not interested in conveying a conservation easement, so this alternative was not considered.

Environmental and Social Impacts Draft EAs

FWP analyzed the environmental impacts of the proposed action and no-action alternatives in both the original and amended draft EAs. Neither the draft nor amended draft EA identified any significant environmental or socio-economic impacts from the proposed acquisition or conservation easement. FWP will continue to pay taxes on the property. FWP does not anticipate any additional development of the property, but the land would be available for dispersed recreational use. FWP will develop a more detailed management plan within one year of the acquisition. FWP anticipates undertaking some riparian and riverbank restoration in the future with funding from Region 1 fisheries budget from BPA. Any future restoration and the final management plan including public access and management of the property will be subject to future draft EA and public review process.

Public Involvement

In compliance with the Montana Environmental Policy Act, an amended draft EA was prepared and released on December 12, 2008, for a 28-day public review through 5:00 p.m., Friday, January 9, 2009. Notices were placed in two newspapers (Bigfork Eagle and Daily Inter Lake), FWP issued a news release, and notices were mailed to neighboring property owners, local conservation groups, and other area outdoor organizations. Copies of the amended draft EA were made available at the local libraries in Kalispell and Bigfork, the FWP Region One headquarters in Kalispell, the state library, and on the FWP web site.

Public Comments

In addition to three comments FWP received in October/November on the first draft EA in favor of the proposed acquisition, FWP received another 16 comments in favor of the project following release of the amended draft EA. Supporters include Flathead Audubon, Flathead Wildlife, Inc., and Mo-Fisch Charters, as well as other members of the recreating and sporting public. One comment that reflects most other supportive comments came from a gentleman from Emigrant, Montana. He stated:

“ I don’t know that I’ve ever seen a more beautiful piece of river front property. I can’t think of a better way to preserve this property then by having the Fish, Wildlife & Parks own it.”

Flathead Audubon Society supported the project by stating...

“In both cases (Hay Creek and Foy’s Bend) the projects will not only preserve and protect native fisheries habitat but will also provide long-term benefits to many other wildlife species associated with the riparian and upland habitats on both properties.”

During the initial draft EA public comment period, FWP received a comment from an adjoining landowner listing some concerns regarding potential public uses and possible impacts on them or their neighbors. They had the following concerns:

Comment:

- Human use on the property has been carefully restricted in the past 32 years; we have concerns about increased public use, traffic, and trespass issues.
- Hunting has also been restricted (only a few hunters per year) in the past 32 years, and they would like to see it stay that way.
- Maintain property line fences that border neighbors' property.
- Keep changes minimal to the property as related to development; would like to see riparian improvements such as fencing and restoration.
- A change could substantially increase vehicle traffic on the county gravel road.
- Implement a weed management plan for the property.

Response: Funds for the acquisition would come from BPA resident fisheries habitat conservation program. In return for these funds, FWP must develop a management plan within one year of closing as part of the agreement for funding. If acquired, FWP would develop the draft management plan for this Foy's Bend property within a next year and issue a new draft EA and public review process for that plan. The concerns addressed here would be covered in greater detail in that management plan. Because the property is being purchased for habitat conservation and not primarily for access, the land uses will be similar to current land uses. It is our intention to allow limited public access to the property for some degree of hunting, fishing, and other carefully managed outdoor activities that will not impact the habitat values or create problems for neighbors. FWP would also be considering the possibility of having a caretaker living on-site.

Revisions to the Amended Draft Environmental Assessment

There are no substantive changes to the amended draft EA as a result of public comment. The amended draft EA, together with this amended decision notice, will serve as the final EA and environmental document for this proposal.

Decision

After reviewing the amended draft EA, the public comments, and public support FWP received on this proposal, I recommend FWP complete the proposed action, the acquisition of 245 acres of land along the Flathead River referred to as Foy's Bend in this document, subject to final approval by the FWP Commission and the State Land Board. This site is a key location for fisheries and wildlife habitat protection in the Lower Flathead River drainage. This site will remain undeveloped and provide sustainable riparian and wetland habitat for westslope cutthroat trout and bull trout, and will also provide excellent wildlife habitat for future generations of Montanans to enjoy. It is my belief that the proposed acquisition has the greatest benefits to the human and natural environment.

James R. Satterfield, Jr.

1/15/09

James R. Satterfield, Jr., Ph.D.
Regional Supervisor

Date